

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY \_\_\_\_\_ D.C.  
05 AUG 17 AM 9:13

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TENN. JACKSON

HUBERT RAY MATTHEWS, SR., )  
as Power of Attorney of Hubert Ray )  
Matthews, Jr., an incapacitated person, )

Plaintiff, )

VS. )

No. 05-1091-T-An

KINDRED HEALTHCARE, INC., )  
et al., )

Defendants. )

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ORDER GRANTING DEFENDANTS' MOTION TO CLARIFY

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On June 15, 2005, the court granted the motions to stay the action.<sup>1</sup> The court stayed the action for sixty (60) days to allow alternate dispute resolution to proceed. If, at the end of the sixty-day period, the matter had not been resolved, the court stated that Defendants would be allowed fifteen (15) days in which to respond to Plaintiff's motion to remand.

Defendants have now filed a motion to clarify the order granting the motions to stay. Defendants contend that (1) Plaintiff is unwilling to participate in alternate dispute resolution and (2) the procedures set forth in the agreement for alternate dispute resolution purportedly signed by the parties cannot be implemented in the sixty-day time period set by

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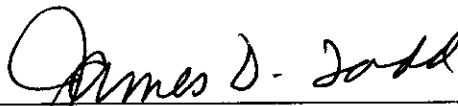

<sup>1</sup> Plaintiff moved the court to stay the action until the motion to remand has been decided, while Defendants moved to stay the action pending alternate dispute resolution.

the court.

Plaintiff has filed a response in which he objects to Defendants' statement that he is unwilling to participate in alternate dispute resolution. According to Plaintiff, this statement is untrue, and he is, in fact, "ready and willing to mediate this matter." Plaintiff's Response at p.2. The court is not required to resolve this factual dispute since both parties are in agreement that alternate dispute resolution should proceed. Because there has been a disagreement concerning Plaintiff's willingness to proceed, the court will allow the parties additional time. The parties will have sixty (60) days from the entry of this order in which to mediate.

Defendants also seek clarification as to whether the procedures set forth in the ADR agreement must be used. Plaintiff contests the validity of the ADR agreement, and the court has not yet ruled on this issue. Consequently, the parties will not be bound by the ADR agreement during the sixty-day mediation period.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
  
  
\_\_\_\_\_  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 25 in case 1:05-CV-01091 was distributed by fax, mail, or direct printing on August 17, 2005 to the parties listed.

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Honorable James Todd  
US DISTRICT COURT